

FILED

AUG 17 2006

RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID GARLAND ANDERSON,

NO. C 06-00917 JW

Petitioner,

**ORDER DENYING MOTION FOR
CERTIFICATE OF
APPEALABILITY**

v.

R. L. AYERS, Warden,

Respondent.

On February 6, 2006, Petitioner initiated the instant action by filing a Petition for a Writ of Habeas Corpus. Petitioner claimed that due to the ineffective assistance of counsel at trial and on appeal, he is being illegally restrained in violation of the 6th Amendment of the United States Constitution. Specifically, Petitioner alleges that his prior counsel only submitted a certain medical opinion of Petitioner's sanity during the sanity phase, instead of also submitting the opinion during the first phase of the trial when the jury was determining petitioner's guilt. Petitioner also alleges that the trial court's erroneous jury instructions deprived him of his right to a fair trial under the 14th Amendment of the United States Constitution.

On July 5, 2006, the Court issued an Order Denying Petition for Writ of Habeas Corpus with Prejudice. Judgment was entered on August 15, 2006. On July 1, 2006, Petitioner filed a notice of appeal.

Pursuant to 28 U.S.C. §2253(c)(1), an appeal may not be taken unless the district court or appellate court issues a certificate of appealability. A certificate of appealability may issue "only if

United States District Court
For the Northern District of California

1 the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §
2 2253(c)(2). The certificate must indicate which issues satisfy this standard, see id. § 2253(c)(3), and
3 the court of appeals is limited to considering only those claims. See Hiivala v. Wood, 195 F.3d
4 1098, 1103 (9th Cir. 1999); Fuller v. Roe, 182 F.3d 699, 702-03 (9th Cir. 1999). "Where a district
5 court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is
6 straightforward: the petitioner must demonstrate that reasonable jurists would find the district
7 court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S.
8 473, 484 (2000).

9 Based upon the papers filed to date, the Court concludes that Petitioner has failed to make the
10 requisite showing of the denial of a constitutional right. Accordingly, the Court declines to issue a
11 certificate of appealability.

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13 Dated: August 15, 2006
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JAMES WARE
United States District Judge

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1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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Dated: *August 17, 2006*

Richard W. Wiking, Clerk

By:

J.W. Wiking
J Younger
Courtroom Deputy